

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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|--|---|----------------------------|
| ----- | X | |
| JOSE VELEZ, | : | |
| | : | |
| Plaintiff, | : | |
| | : | COMPLAINT |
| -against- | : | 15-cv-7441 |
| | : | |
| NYPD POLICE OFFICER MICHAEL O'BRIEN, | : | |
| Shield No. 22886 of the 9 th Precinct, NYPD | : | <u>Jury Trial Demanded</u> |
| POLICE OFFICER JUERGO, Shield No. | : | |
| unknown, NYPD POLICE OFFICER JUARGES, | : | |
| Shield No. unknown, JOHN DOE POLICE | : | |
| OFFICERS 1-10, | : | |
| | : | |
| Defendants. | : | |
| ----- | X | |

Plaintiff, JOSE VELEZ, by and through his attorney, ILISSA BROWNSTEIN,
complaining of Defendants, respectfully alleges as follows:

PRELIMINARY STATEMENT

1. This is an action to recover money damages arising out of the violation of Plaintiff's rights under the Constitution.
2. Plaintiff brings this civil rights action alleging that New York City police officers of the 9th Precinct violated his rights under the Fourth Amendment to the United States Constitution. Specifically, Plaintiff alleges that, on September 22, 2012, at approximately 5:30 AM at 11th Street and Avenue C in the County, City and State of New York, Defendant Police Officers Michael O'Brien, Juergo or Juargues and John Doe Police Officers 1-10 willfully and purposefully assaulted him, causing him serious physical injury, and unlawfully seized and never returned his personal property.

JURISDICTION & VENUE

3. This action is brought pursuant to 42 U.S.C. §§ 1983 and 1988 and the Fourth Amendment to the United States Constitution. Jurisdiction is conferred upon this Court by 28 U.S.C. §§ 1331 and 1343.

4. Venue is proper in the Southern District of New York pursuant to 28 U.S.C. §§ 1391(b) and (c) because a substantial part of the events giving rise to Plaintiff's claims occurred in this District, and because some or all of the Defendants work and reside in this District.

JURY DEMAND

5. Plaintiff demands a trial by jury in this action.

PARTIES

6. Plaintiff is a resident of the State, County and City of New York.

7. Defendants Police Officer Michael O'Brien, Police Officer Juergo, Police Officer Juerges and John Doe Officers 1-10 of the 9th Precinct were members of the New York Police Department ("NYPD") police force on the date in question working as police officers, detectives or supervisors. Plaintiff does not know the real names and shield numbers of Defendants John Doe Officers 1-10. On information and belief Plaintiff recalls the names of Defendant Police Officer Juergo and Defendant Police Officer Juerges to be as phonetically spelled here but Plaintiff has the intention of correcting their names upon receipt of discovery if their names are shown to be different. Plaintiff does not know the shield numbers of Defendant Police Officer Juergo and Defendant Police Officer Juerges. Defendants were acting under color of state law and in their capacities as police officers at all relevant times. Defendants are liable for directly participating in the unlawful acts described herein and for failing to intervene to protect Plaintiff

from unconstitutional conduct. The Defendants are sued in their official and individual capacities.

STATEMENT OF FACTS

8. On September 22, 2012, at approximately 5:30 a.m. at 11th Street and Avenue C in the County, City and State of New York, Plaintiff, who had been drinking, lost control of his vehicle and struck several parked vehicles. Plaintiff was seat belted at the time and his airbag deployed.

9. Defendants arrived at the scene and Defendant O'Brien described Plaintiff as unsteady on his feet and slurring his speech. Another contemporaneous police report filed by an arresting officer (on information and belief Defendant O'Brien, Defendant Juergo or Defendant Juarges, but perhaps one of the John Doe Defendants at the scene as well, as the report is unsigned) wrote that a witness on the scene also described Plaintiff as swaying and with unclear speech.

10. According to Defendant O'Brien, when he was placing Plaintiff under arrest, Plaintiff tried to turn in order to not be handcuffed. Defendant O'Brien, Defendant Juergo or Defendant Juarges and John Doe Defendant Police Officers 1-5 from the Ninth Precinct either directly, willfully and purposefully, or through a failure to intervene, subjected Plaintiff to assault with such force that Plaintiff suffered severe personal injuries.

11. After placing Plaintiff in handcuffs and subduing him by putting him face down on the ground, an easy task in light of Plaintiff's swaying state as noted on police report, one or more of the Defendants directly punched Plaintiff in the side of the face four to five times. Defendants on the scene who did not directly punch Plaintiff in the side of the face four to five times failed to intervene to stop the violence. The direct assault and the failure to intervene to stop the assault were unreasonable and disproportionate to the situation as Plaintiff was at this point handcuffed and under police control.

12. In addition, one of the Defendants bashed Plaintiff's head into a vehicle while moving Plaintiff even as he was handcuffed. Defendants on the scene failed to intervene to protect Plaintiff from this violence which, like the punches, was unreasonable and disproportionate to the situation.

13. Plaintiff asked Defendants, on information and belief Defendant Juergo or Defendant Juarges, why he had been beaten, and one of the Defendants responded "because I wanted to." Plaintiff said that he would bring a civil rights lawsuit and that same Defendant responded "I've already had those."

14. Plaintiff was so badly injured the police took him to Bellevue Hospital, where hospital staff checked Plaintiff in at 8:30 AM. Medical personnel noted that EMS from the scene brought Plaintiff in and medical personnel determined that Plaintiff had suffered, among other injuries, a minimally or non-displaced nasal bone fracture, obvious head trauma, an abrasion over his left brow, blood in his nostrils and swelling over his right cheekbone while being restrained.

15. Plaintiff's hospital reports also reflect that contemporaneous with this incident Plaintiff reported being punched in the face multiple times.

16. Plaintiff was taken to Central Booking after his release from Bellevue.

17. This lawsuit seeking to vindicate Plaintiff's federal constitutional and statutory rights has been commenced within three years after the happening of the events upon which the claims are based.

18. Plaintiff suffered damage as a result of Defendants' actions. Plaintiff suffered emotional distress, mental anguish, fear, pain, bodily injury, anxiety, embarrassment and humiliation.

CLAIM
Unreasonable Force

19. Plaintiff repeats the foregoing allegations as if fully set forth herein.

20. Defendants' use of force upon Plaintiff or their failure to intervene was objectively unreasonable and caused Plaintiff serious physical injury and psychological and emotional distress.

21. Accordingly, Defendants are liable to Plaintiff under the Fourth and Fourteenth Amendments pursuant to 42 U.S.C. §§ 1983 and 1988 for using unreasonable force.

22. As a direct and proximate result of this unlawful conduct, Plaintiff sustained the damages hereinbefore alleged.

PRAYER FOR RELIEF

23. **WHEREFORE**, Plaintiff demands a jury trial and judgment against Defendants as follows:

- a. Compensatory damages against all Defendants, jointly and severally, in an amount to be determined by a jury;
- b. Punitive damages against all Defendants, jointly and severally, in an amount to be determined by a jury;
- c. Reasonable attorney's fees and costs pursuant to 28 U.S.C. § 1988; and
- d. Such other and further relief as the Court may deem just and proper.

DATED: September 21, 2015

/s/ Ilissa Brownstein

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